

HOUSE BILL REPORT

SSB 5850

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to the definition of sick leave under the family care act.

Brief Description: Clarifying the definition of "sick leave" for family leave.

Sponsors: Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Spanel, Keiser, Kohl-Welles and Shin).

Brief History:

Committee Activity:

Commerce & Labor: 3/21/05, 3/31/05 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Provides that, if paid time is not allowed for illness, an employee may use time allowed for disability to care for family members who have certain health conditions.
- Specifies that an employee may use time allowed for illness, vacation, and personal holiday under state law for such purposes.
- Modifies the definition of "parent" to include an adoptive parent.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; and Crouse.

Staff: Jill Reinmuth (786-7134).

Background:

The state Family Care Law provides that, if employees are entitled to sick leave or other paid time off, employers must allow employees to use their choice of that leave to care for children with health conditions that require treatment or supervision, or spouses, parents, parents-in-law, or grandparents who have serious health conditions or emergency conditions.

"Sick leave or other paid time off" is defined as time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable to an employee for illness, vacation, and personal holiday. The definition of "sick leave or other paid time off" does not explicitly exclude disability leave. However, when the Legislature added this definition to the state Family Care Law in 2002, colloquies on the floors of the House of Representatives and the Senate explained that "sick leave or other paid time off" do not include disability leave. "Parent" is defined as a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

The state Family Care Law is administered by the Department of Labor and Industries (Department). It requires the Department to investigate alleged violations of these requirements. It also authorizes the Department to issue a notice of infraction and impose a civil penalty if the Department reasonably believes an employer has violated these requirements.

The federal Employee Retirement Income Security Act of 1974 (ERISA) governs employee pension, health, and welfare benefit plans, and expressly preempts state laws which "relate to any" such plans. These plans include ones that provide employees with benefits in the event of sickness or disability. The U.S. Supreme Court has noted that most of the benefits provided by ERISA-regulated plans accumulate over a period of time and are payable only upon the occurrence of a contingency outside of the control of the employee. These plans do not include certain payroll practices. The U.S. Secretary of Labor's regulations specify that ERISA-regulated plans do not include the "payment of an employee's normal compensation, out of the employer's general assets, on account of periods of time during which the employee is physically or mentally unable to perform his or her duties, or is otherwise absent for medical reasons . . ." The U.S. Supreme Court has noted that these payroll practices generally involve payments that are fixed, due at known times, not dependent on contingencies outside the employee's control, and payable from the employer's general assets.

Summary of Amended Bill:

Employees may use sick leave or other paid time off, which may include time allowed for disability in some circumstances, to care for certain family members, which must include adoptive parents, who have certain health conditions.

The definition of "sick leave or other paid time off" is modified to specify that:

- If paid time is not allowed to the employee for illness, "sick leave or other paid time off" includes time allowed to the employee under a state law, collective bargaining agreement, or employer policy for disability under practices not covered by the Employee Retirement Income Security Act (ERISA).
- "Sick leave or other paid time off" also includes time allowed under an appropriate state law to an employee for illness, vacation, and personal holiday.

- "Sick leave or other paid time off" does not include time allowed to an employee under plans covered by the ERISA.

The definition of "parent" is modified to include an adoptive parent of an employee.

Amended Bill Compared to Substitute Bill:

The definition of "sick leave or other paid time off" is modified to specify that it includes: (1) time allowed to an employee for disability under practices not covered by the Employee Retirement Income Security Act if the employee does not have paid sick leave; and (2) time allowed to an employee under state law for illness, vacation, and personal holiday.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The language before you was agreed to by labor and business before the bill was passed out of the Senate committee.

(Neutral) We have received complaints about the current law from LEOFF I employees. This bill would probably draw them in. It is sometimes difficult to distinguish disability leave policies. We want to clarify which types of leave are in and which are out.

This bill may encourage employers to drop paid sick leave, and use self-administered policies instead. The term "bona fide" is not defined.

(With concerns) We have concerns and questions about the language of this bill, especially with regard to LEOFF I employees. They receive up to six months of temporary disability leave. Some get sick leave, but others do not. It is not clear whether LEOFF I employees are in or out, or whether this is an expansion of LEOFF I benefits.

Testimony Against: None.

Persons Testifying: (In support) Senator Spanel, prime sponsor.

(Neutral) Rich Ervin and Mary Miller, Department of Labor and Industries; and Kris Tefft, Association of Washington Business.

(With concerns) Jim Justin, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.